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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,782	01/29/2001	Daniel P. Kelly	A00219US (98361.3)	8325

7590 01/13/2003

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EXAMINER

LEE, EDMUND H

ART UNIT PAPER NUMBER

1732

DATE MAILED: 01/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/771,782

Applicant(s)

KELLY, DANIEL P.

Examiner

EDMUND H LEE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 37-45 and 47-49 is/are pending in the application.
- 4a) Of the above claim(s) 44 and 45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37-43 and 47-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 44-45 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.
2. Applicant's election without traverse of group I (claims 37-43 and 47-49) in Paper No. 6 is acknowledged.
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 37-43 and 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bateholts (USPN 1958841) in view of Sport Beads (promotional information on the Internet). In regard to claim 37, Bateholts teaches the basic claimed process including a method of making a necklace (pg 1, lns 1-10; figs 1-4); providing a mold of beads for a necklace wherein the beads can be spherical or cylindrical (figs 1-4); placing a string or other line or cord in the mold (figs 1-4); supplying plastic to the mold (figs 1-4); removing from the mold a necklace formed of beads directly molded onto the string or line or cord. However, Bateholts does not teach beads having a sport projectile shape. Sport Beads teaches necklaces having sport shaped beads. Bateholts and Sport Beads are combinable because they are analogous with respect to beaded necklaces. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made make the sports shaped beaded necklace of Sport

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Beads by the process of Bateholts in order to efficiently mold the necklaces. In regard to claims 38-43 and 47-49, Bateholts does not teach adding a sports projectile bead larger than the other beads; molding football beads; molding baseball beads; molding soccer beads; molding hockey beads; attaching one or more pendants to the necklace wherein the pendant is larger than the projectile shaped beads; attaching a two colored pendant to the necklace; using a sport logo shape pendant. Sport Beads teaches using football beads; using baseball beads; using soccer beads; and using hockey beads.

Since Bateholts and Sport Beads are combinable for the above reasons, it would have been obvious to one of ordinary skill in the art at the time the invention was made to mold any of the necklaces of Sport Beads by the process of Bateholts in order to efficiently mold them. In regard to adding a sports projectile bead larger than the other beads, such is well-known in the necklace art. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a sports projectile bead larger than the other beads to the necklace of Bateholts (modified) in order to broaden the appeal of the necklace. In regard to providing/attaching a two colored pendant to the necklace, necklaces having a two colored pendant are well-known in the necklace art for their aesthetic appeal. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide/attach a two colored pendant to the necklace of Bateholts in order to diversify the aesthetic appeal of the necklace. In regard to using a sport logo shape pendant, it is well-known in the necklace art to attach sport logo shaped pendants to necklaces to display a fan's excitement for a team. Thus, it would have been obvious to one of ordinary skill in the

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art at the time the invention was made to use a sport logo shaped pendant as the pendant of Bateholts (modified) in order to appeal to diversify the aesthetic appeal of the necklace.

5. Applicant's arguments filed 10/31/02 have been fully considered but they are not persuasive. Even though the declaration of Daniel P. Kelly filed 10/31/02 was sufficient to overcome the 35 USC 103 rejection of claims 37-43 and 47-49 over Bateholts in view of America's Fund Raisers, the above rejection makes obvious the claimed invention. The America's Fund Raisers reference that was removed because of the above mentioned declaration has been replaced with the Sport Beads that teaches the same limitations as the America's Fund Raisers reference. It should be mentioned that the Sport Beads reference has a copyright date of 1999.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


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7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. MardiGras Outlet (promotional information) teaches a baseball bead larger than adjacent beads on a beaded necklace. Ametraco.com (promotional information) teaches beaded necklaces having sports beads thereon. Plebanek (USPN 2366932) teach molding beaded cords.

8. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Examiner Edmund Lee whose telephone number is (703) 305-4019. The examiner can normally be reached on Monday-Wednesday and Friday from 8:00 AM to 4:00 PM. The fax number for Examiner Edmund Lee is (703) 872-9615. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan H. Silbaugh, can be reached on (703) 308-3829. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

EHL

January 10, 2003

  
Edmund Lee 1/10/03  
Patent Examiner, AU 1732